

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF KANSAS

3 IN RE:

4
5 URETHANE ANTITRUST LITIGATION

CASE NO. 04-1616

6
7 TRANSCRIPT OF MOTION IN LIMINE CONFERENCE

8 before

HONORABLE JOHN W. LUNGSTRUM

9 on

10 JANUARY 9, 2013

11 APPEARANCES

12 For the Class
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1 blah. We're going to put on evidence of -- there's
2 nothing wrong with any of that. It's just you're not
3 going to tell them, by the way, members of the jury,
4 they aren't here because they paid us some money.

5 MR. GUZMAN: We had intended to say things
6 along the lines of, we allege this conspiracy that
7 involves these other companies. They are not here.
8 This case is against Dow and Dow only.

9 THE COURT: I have no problem with that.

10 MR. GUZMAN: Thank you, your Honor.

11 THE COURT: Yeah. All right. Anything
12 further? All right. Let's turn to the deposition
13 objections. Let me say as a first preliminary that
14 there was a lot of skirmishing about the way in which
15 the deposition excerpts were presented to me. I
16 disregarded both the transmittal letter with the last
17 section of depositions and the letter sent to me by
18 Dow questioning the contents of that transmittal
19 letter. I threw them both in the trash, actually,
20 the recycling, to be more precise, but I didn't need
21 the further help that whoever was trying to give me.
22 I do want to say this though because I know that is a
23 cumbersome process. This whole deposition objection
24 thing is a pain in the neck for everybody, and I want
25 to thank and congratulate both sides on an excellent

1 job in your own ways, either printed in or
2 handwritten in, on making very clear to me what your
3 objections were and why; and tabbing those pages for
4 me saved my staff a considerable amount of effort and
5 me a considerable amount of time. I read all this
6 stuff, and it really helps me to have you have done
7 it the way you did it. So thank you for your
8 efforts.

9 Now, I have reviewed all of the deposition
10 transcripts that were provided to me, and I am
11 prepared to rule on the objections made. There are a
12 couple of questions I want to ask about a couple of
13 objections, but, generally speaking, I am prepared to
14 simply tell you my rulings. I will make a few
15 preliminary comments and then proceed to read to you
16 the rulings. I am sorry I have not had the time to
17 prepare my rulings in written form, so please listen
18 carefully and ask me to repeat or clarify, and feel
19 free to order a transcript, if you wish. This is
20 going to be painful for all of us. This is one of
21 the things I think the court reporter hates more than
22 anything else, when we get down to this, trying to
23 follow all the numbers and lines and everything else.

24 For your guidance, when I state that objections
25 on certain pages or on ranges of pages are overruled,

1 I mean that all objections are overruled unless I
2 specifically state otherwise. In other words, there
3 may have been multiple objections raised. If I say
4 overruled, I'm not going to deal with each one of
5 them separately. When I sustain an objection as --
6 this is the term I will use, beyond the scope, I'm
7 using that phrase as shorthand for a combination of
8 reasons for sustaining objections which plaintiffs
9 style as outside the scope. Those reasons include
10 not only literal determinations of outside the scope
11 of direct examination by plaintiffs but also Rule 403
12 considerations of confusion, delay, and
13 cumulativeness and the court's inherent power to
14 control the presentation of evidence. But beyond the
15 scope is my shorthand for that.

16 While there is no exact rule of thumb that
17 either requires or helps to determine proportionality
18 between direct and cross examination, I do think that
19 the court can, and should, be cognizant of the order
20 of presentation of proof by which the party who bears
21 the burden of persuasion also enjoys the advantage of
22 primacy in presenting its evidence. With deposition
23 testimony, unlike live testimony, the party who seeks
24 to present evidence which might arguably fall within
25 the scope of direct if liberally defined but which is

1 lengthy and potentially confusing in the context of
2 the plaintiffs' presentation does not lose the
3 opportunity of spontaneity or timeliness which is
4 involved in live testimony, where if you don't ask
5 the question at that time, it may get away from you
6 for a number of different reasons. The out-of-scope
7 testimony is available to be presented in the
8 parties' case-in-chief, and the momentary potential
9 for effective discrediting is not lost in the same
10 way as with a live witness. I believe that is
11 particularly so in this particular case.

12 Nor do we have a situation, as we would with a
13 live witness, where a witness might be inconvenienced
14 by having to return to the stand where we have a
15 video deposition involved. With a live witness I may
16 be more liberal in my view about what is beyond the
17 scope, as I have used that term, but with these
18 deposition transcripts I think that's a different
19 issue. Moreover, delay may be prevented because the
20 proponent of the evidence in this case -- by and
21 large, Dow -- may conclude it is unnecessary on
22 reflection and not offer the volume of evidence in
23 its case-in-chief that it might like to have inserted
24 in the plaintiffs' case-in-chief. It's a decision
25 Dow has to make as a strategic or tactical matter.